

2013 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB616)

Received: 1/17/2014	Received By: pgrant
Wanted: As time permits	Same as LRB:
For: Thomas Larson (608) 266-1194	By/Representing: Matt Pulda
May Contact:	Drafter: pgrant
Subject: Education - school boards	Addl. Drafters:
	Extra Copies: TKK FFK

Submit via email: **YES**
 Requester's email: **Rep.Larson@legis.wisconsin.gov**
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Biometric data

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pgrant 1/18/2014	kfollett 1/24/2014		_____			
/1	pgrant 1/29/2014	kfollett 2/1/2014	rschluet 1/27/2014	_____	sbasford 1/27/2014	sbasford 1/27/2014	
/2	pgrant 2/4/2014	kfollett 2/4/2014	jmurphy 2/2/2014	_____	mbarman 2/3/2014	mbarman 2/3/2014	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3	pgrant 2/6/2014	kfollett 2/7/2014	jfrantze 2/4/2014	_____	mbarman 2/4/2014	mbarman 2/4/2014	
/4			jfrantze 2/10/2014	_____	sbasford 2/10/2014	sbasford 2/10/2014	

FE Sent For:

<END>

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14/5F 2/7
 14/5F 2/7
 R3 2/10

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R2
2/4

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/1		125f 2/1	rschlue 1/27/2014		sbasford 1/27/2014	sbasford 1/27/2014	

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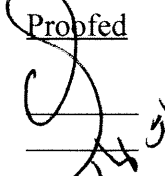
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Biometric data ✓

Instructions:

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Drafting History:

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/?	pgrant	1/15/14 1/24	1/15/14 1/24	 12/4/13 gm			

FE Sent For:

<END>

Grant, Peter

From: Pulda, Matt
Sent: Friday, January 17, 2014 1:41 PM
To: Grant, Peter
Subject: Amendment to AB 616

Hi, Peter,

In the wake of Wednesday's education committee's hearing on AB 616, Representative Larson would like to make some changes to the bill, probably as a substitute amendment. We would like something along these lines:

No school board may collect or save a pupil's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation. Biometric data does not include writing samples, photographs, or physical descriptions such as height, weight, hair color, or eye color. This section does not apply to information collected from a pupil by a school nurse for treatment purposes.

The basic definition used here comes from 134.98(1)(b)5. and 943.201(1)(b)13. I based the exclusions on an Illinois statute, 740 ILCS 14/10.

Thanks!

Matt Pulda
Research Assistant/Committee Clerk
Office of State Rep. Tom Larson
Assembly Committee on Family Law
(608) 266-1194

Grant, Peter

From: Pulda, Matt
Sent: Friday, January 17, 2014 3:27 PM
To: Grant, Peter
Subject: RE: Amendment to AB 616

Hi, Peter,

Sorry about that – I forgot to include “unless the pupil’s parent or guardian consents in writing”, as in the original bill. Thanks for catching that!

I think you’re right about “save”. Please take it out.

As for “unique”, that qualifier is included in both 134.98(1)(b)5. and 943.201(1)(b)13. The concern at the hearing was that the original bill was (or could be interpreted to be) too broad in scope. Certain members of the committee threw out some (to my mind) far-fetched examples of “biometrics”, and other committee members and speakers also indicated the need for a clear definition of what is and isn’t allowed. Right now, I think it’s probably best to err on the side of narrowness right now and keep “unique” in there. I think the fact that identical language exists elsewhere in statutes will make it more acceptable to the committee.

Would you also include language that extends the prohibition to the use of blood pressure cuffs, pressure sensors, and posture chairs as part of the instruction or assessment of students or as a means of collecting student data? Representative Knudson had apparently singled them out in his request to Anne Sappenfield for her opinion on schools’ authority to use them (http://www.thewheelerreport.com/wheeler_docs/files/1119legcouncilbiometric.pdf), and it may have been those methods in particular to which the people testifying at the Common Core hearings objected. Adding references to those methods might also fill in any gaps the reference to “unique” biometric data may create.

Thanks!

Matt

From: Grant, Peter
Sent: Friday, January 17, 2014 2:02 PM
To: Pulda, Matt
Subject: RE: Amendment to AB 616

Hi Matt,

Do you want to provide an exception if the pupil’s parent or guardian consents?

Also, I think “save” may weaken the first sentence. If a school district may not collect data, how can it save it?

Finally, I’m a little concerned about the use of “unique” to modify “biometric data.” It implies that a school district could collect a pupil’s biometric data if the data were *not* unique. First, does nonunique biometric data exist, and second, if it does, is it okay for school districts to collect it?

Peter

From: Pulda, Matt
Sent: Friday, January 17, 2014 1:41 PM

To: Grant, Peter

Subject: Amendment to AB 616

Hi, Peter,

In the wake of Wednesday's education committee's hearing on AB 616, Representative Larson would like to make some changes to the bill, probably as a substitute amendment. We would like something along these lines:

No school board may collect or save a pupil's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation. Biometric data does not include writing samples, photographs, or physical descriptions such as height, weight, hair color, or eye color. This section does not apply to information collected from a pupil by a school nurse for treatment purposes.

The basic definition used here comes from 134.98(1)(b)5. and 943.201(1)(b)13. I based the exclusions on an Illinois statute, 740 ILCS 14/10.

Thanks!

Matt Pulda
Research Assistant/Committee Clerk
Office of State Rep. Tom Larson
Assembly Committee on Family Law
(608) 266-1194

(740 ILCS 14/10)

Sec. 10. Definitions. In this Act:

"Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry. Biometric identifiers do not include writing samples, written signatures, photographs, human biological samples used for valid scientific testing or screening, demographic data, tattoo descriptions, or physical descriptions such as height, weight, hair color, or eye color. Biometric identifiers do not include donated organs, tissues, or parts as defined in the Illinois Anatomical Gift Act or blood or serum stored on behalf of recipients or potential recipients of living or cadaveric transplants and obtained or stored by a federally designated organ procurement agency. Biometric identifiers do not include biological materials regulated under the Genetic Information Privacy Act. Biometric identifiers do not include information captured from a patient in a health care setting or information collected, used, or stored for health care treatment, payment, or operations under the federal Health Insurance Portability and Accountability Act of 1996. Biometric identifiers do not include an X-ray, roentgen process, computed tomography, MRI, PET scan, mammography, or other image or film of the human anatomy used to diagnose, prognose, or treat an illness or other medical condition or to further validate scientific testing or screening.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3694/3

PG:kjfrs

LRB 50243/1
PG: kjf

other
A. SUB ST. AMDT. —
TO **2013 ASSEMBLY BILL 616**

January 10, 2014 - Introduced by Representatives T. LARSON, THIESFELDT, KNUDSON, PRIDEMORE, STEINEKE, SCHRAA, BERNIER, BORN, CRAIG, JACQUE, KNOBL, KULF, MURPHY, TITTL and HUTTON, cosponsored by Senators GROTHMAN and LAZICH. Referred to Committee on Education.

Regen

- 1 AN ACT *to create* 118.125 (8) of the statutes; **relating to:** prohibiting the
2 collection of a pupil's ^{unique} biometric data and the use of ~~any device to assess a pupil's~~
3 ~~physiological or emotional state.~~ *certain devices without consent*

Analysis by the Legislative Reference Bureau

This bill prohibits a school board from collecting any biometric data from a pupil, or from using any device or mechanism to assess a pupil's physiological or emotional state, unless the pupil's parent or guardian consents in writing. Examples of biometric technologies are fingerprint identification, retinal scanning, and hand or palm geometry.

The bill authorizes the attorney general or any district attorney to bring an action in circuit court to enforce the provision described above.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 4 SECTION 1. 118.125 (8) of the statutes is created to read: ^{91.} ~~the pupil's~~
5 118.125 (8) BIOMETRIC DATA. ~~No school board may collect biometric data from~~ ^{unique}
6 ~~a pupil, or use any device or mechanism to assess a pupil's physiological or emotional~~
7 ~~state, unless the pupil's parent or guardian consents in writing. The attorney~~

(a) Unless a pupil's parent or guardian consents in writing, a school board may not do any of the following:

ASSEMBLY BILL 616

SECTION 1

1 ~~general or any district attorney may bring an action in circuit court for the~~
2 ~~enforcement of this subsection, including an action to restrain by temporary or~~
3 ~~permanent injunction any violation of this subsection.~~

4 (END)

, including fingerprint, voice print, retina or
iris image, or any other unique physical
representation. INSERT
apply to any of the following:

(1) Writing samples, photographs, or
physical descriptions such as height,
weight, hair color, or eye color.

(2) Information collected from a
pupil by a school nurse for treatment
purposes.

(End)

INSERT

~~§ 2. Unless a pupil's parent or~~
~~guardian consents in writing, a school~~
~~board may not~~ ^a ~~use~~ a blood pressure cuff,
pressure sensor, or posture chair on
the pupil as part of the instruction or
assessment of the pupil or as a
means of collecting pupil data.

§ (b) Paragraph (a) does not

Grant, Peter

From: Pulda, Matt
Sent: Wednesday, January 29, 2014 10:10 AM
To: Grant, Peter
Subject: LRBs0243 (Sub to AB 616)

Hi, Peter,

I shared the draft substitute amendment with the Representative, and he would like to include the enforcement mechanism that was been part of the original bill (the last sentence). Would you please add that to the substitute?

Thanks!

Matt Pulda
Research Assistant/Committee Clerk
Office of State Rep. Tom Larson
Assembly Committee on Family Law
(608) 266-1194



500N



2

**ASSEMBLY SUBSTITUTE AMENDMENT ,
TO ASSEMBLY BILL 616**

Regen

1 **AN ACT to create** 118.125 (8) of the statutes; **relating to:** prohibiting the
2 collection of a pupil's unique biometric data and the use of certain devices
3 without consent.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 118.125 (8) of the statutes [✓]is created to read:

5 118.125 (8) BIOMETRIC DATA. (a) Unless a pupil's parent or guardian consents
6 in writing, a school board may not do any of the following:

7 1. Collect the pupil's unique biometric data, including fingerprint, voice print,
8 retina or iris image, or any other unique physical representation.

9 2. Use a blood pressure cuff, pressure sensor, or posture chair on the pupil as
10 part of the instruction or assessment of the pupil or as a means of collecting pupil
11 data.

(b) Paragraph (a) does not apply to any of the following:

1. Writing samples, photographs, or physical descriptions such as height, weight, hair color, or eye color.

2. Information collected from a pupil by a school nurse for treatment purposes.

~~(END)~~





State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3694/3
PG:kjf:rs

2013 ASSEMBLY BILL 616

January 10, 2014 - Introduced by Representatives T. LARSON, THIESFELDT, KNUDSON, PRIDEMORE, STEINEKE, SCHRAA, BERNIER, BORN, CRAIG, JACQUE, KNODL, KULP, MURPHY, TITTL and HUTTON, cosponsored by Senators GROTHMAN and LAZICH. Referred to Committee on Education.

1 **AN ACT** *to create* 118.125 (8) of the statutes; **relating to:** prohibiting the
2 collection of a pupil's biometric data and the use of any device to assess a pupil's
3 physiological or emotional state.

Analysis by the Legislative Reference Bureau

This bill prohibits a school board from collecting any biometric data from a pupil, or from using any device or mechanism to assess a pupil's physiological or emotional state, unless the pupil's parent or guardian consents in writing. Examples of biometric technologies are fingerprint identification, retinal scanning, and hand or palm geometry.

The bill authorizes the attorney general or any district attorney to bring an action in circuit court to enforce the provision described above.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 118.125 (8) of the statutes is created to read:

5 118.125 (8) BIOMETRIC DATA. No school board may collect biometric data from
6 a pupil, or use any device or mechanism to assess a pupil's physiological or emotional
7 state, unless the pupil's parent or guardian consents in writing.

The attorney

9 (c)

ASSEMBLY BILL 616

SECTION 1

1 general or any district attorney may bring an action in circuit court for the
2 enforcement of this subsection, including an action to restrain by temporary or
3 permanent injunction any violation of this subsection.

4 (END)

Grant, Peter

From: Pulda, Matt
Sent: Monday, February 03, 2014 4:07 PM
To: Grant, Peter
Cc: Hutkowski, Hariah
Subject: SA to AB 616

Importance: High

Hi, Peter,

To follow up on my voicemail, I have shared LRBs0243/2 with a few other offices, and I would like to know whether it is your opinion that a parent signing off on a child's IEP would count as consent for biometric data collection or the use of the blood pressure cuff etc. under 118.125(8)(a). If your opinion is that it does, we don't need to make any further changes to the substitute amendment in that area. If, on the other hand, you believe that a parent's consent to an IEP would *not* count as written consent under (8)(a), we would like to include an IEP exception to (a), either as an addition to (b)2. or as a separate (b)3. It is not our intent to interfere with the IEP process or make it more complicated.

In addition to that change (if necessary), we would like to include a provision that would prohibit a district from sharing any information collected under (a) with public or private entities outside the district. In other words, even if a parent consents to the collection of such data or the use of such devices, we want to make sure that information stays within the district.

Please let me know if you have any questions or concerns. It is my understanding that the Assembly education plans to exec on AB 616 on Thursday, so we need a new draft as soon as possible. I will send the /2 stripes back to you.

Thanks!

Matt Pulda
Research Assistant/Committee Clerk
Office of State Rep. Tom Larson
Assembly Committee on Family Law
(608) 266-1194



Today



ASSEMBLY SUBSTITUTE AMENDMENT,
TO ASSEMBLY BILL 616

Regen

required by a pupil's
individualized education program
under s. 118.787 or

1 AN ACT *to create* 118.125 (8) of the statutes; **relating to:** prohibiting the
2 collection of a pupil's unique biometric data and the use of certain devices
3 without consent.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 118.125 (8) of the statutes is created to read:

5 118.125 (8) BIOMETRIC DATA. (a) Unless a pupil's parent or guardian consents
6 in writing, a school board may not do any of the following:

7 1. Collect the pupil's unique biometric data, including fingerprint, voice print,
8 retina or iris image, or any other unique physical representation.

9 2. Use a blood pressure cuff, pressure sensor, or posture chair on the pupil as
10 part of the instruction or assessment of the pupil or as a means of collecting pupil
11 data.

or data ✓ ✓
3. Disclose any information collected under subd. 1. or 2.
to any person.

1 (b) Paragraph (a) does not apply to any of the following:

2 1. Writing samples, photographs, or physical descriptions such as height,
3 weight, hair color, or eye color.

4 2. Information collected from a pupil by a school nurse for treatment purposes.

5 (c) The attorney general or any district attorney may bring an action in circuit
6 court for the enforcement of this subsection, including an action to restrain by
7 temporary or permanent injunction any violation of this subsection.
8

(END)



Grant, Peter

From: Pulda, Matt
Sent: Thursday, February 06, 2014 3:15 PM
To: Grant, Peter
Cc: Kulow, Chris
Subject: FW: Biometrics substitute

Hi, Peter,

Representative Larson and I met with Representative Kestell and Chris Kulow, and Representative Larson would like to you to redraft LRBs0249 along the lines of the bolded language below. I will return the /3 stripes to you. Please let me know if you have any questions.

Thanks!

Matt

From: Kulow, Chris
Sent: Friday, January 31, 2014 4:32 PM
To: Pulda, Matt
Subject: RE: Biometrics substitute

Matt,

Finally had a chance to look over the sub draft and have a suggestion. There is model legislation from ALEC that simply states that districts shall not report biometric data to the state: <http://www.alec.org/model-legislation/student-data-accessibility-transparency-accountability-act/>

(B) Districts shall not report to the state the following individual student data:

...

(4) student biometric information.

That may be the simplest way to go and avoid the pitfalls with definitions and whatnot. Let me know what you think. We are striving to get all of these bills ready to exec next Thursday if possible.

Thanks,

Christopher Kulow
Office of State Representative Steve Kestell
212 North - State Capitol; 266-8530
<http://kestell.assembly.wisconsin.gov>

From: Pulda, Matt
Sent: Wednesday, January 29, 2014 12:46 PM
To: Kulow, Chris
Subject: Biometrics substitute

Hi, Chris,

Here is the original version of the substitute. We have asked the drafter (Peter Grant) to add the enforcement language from the original bill.

We pulled the phrase and definition of "unique biometric data" from 134.98(1)(b)5. and 943.201(1)(b)13. It provides a few examples, but I think the key word is *unique*, which should take care of some of the...broader interpretations some members of the committee give to "biometric data". We also include a few examples of what is *not* biometric data, to cover our bases (I took those examples from an Illinois statute). We also refer to other specific practices – blood pressure cuff, pressure sensors, and posture seats – that were referred to in the Leg Council memo Knudson had requested.

Please let me know if you have any questions, or if you think it needs more work.

Thanks!

Matt Pulda
Research Assistant/Committee Clerk
Office of State Rep. Tom Larson
Assembly Committee on Family Law
(608) 266-1194



State of Wisconsin
2013 - 2014 LEGISLATURE

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LRBs0243/3

PG:kjf:jf

ASSEMBLY SUBSTITUTE AMENDMENT,
TO ASSEMBLY BILL 616

Reg'n

1 AN ACT *to create* 118.125 (8) of the statutes; **relating to:** prohibiting the
2 ~~collection of a pupil's ^{reporting of} unique biometric data and the use of certain devices~~
3 ~~without consent.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 118.125 (8) of the statutes is created to read:

5 118.125 (8) BIOMETRIC DATA. ~~(a) Unless required by a pupil's individualized~~
6 ~~education program under s. 115.787 or a pupil's parent or guardian consents in~~
7 ~~writing, a school board may not do any of the following.~~ *report a*

8 1. ~~Collect the pupil's unique~~ biometric data, including fingerprint, voice print,
9 retina or iris image, or any other unique physical representation.

10 2. Use a blood pressure cuff, pressure sensor, or posture chair on the pupil as
11 part of the instruction or assessment of the pupil or as a means of collecting pupil
12 data.

to the state.

1 ~~3. Disclose any information or data collected under subd. 1. or 2. to any person.~~

2 (b) Paragraph (a) does not apply to any of the following:

3 1. Writing samples, photographs, or physical descriptions such as height,
4 weight, hair color, or eye color.

5 2. Information collected from a pupil by a school nurse for treatment purposes.

6 (c) The attorney general or any district attorney may bring an action in circuit
7 court for the enforcement of this subsection, including an action to restrain by
8 temporary or permanent injunction any violation of this subsection.

9 (END)